

THE HONOUABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.1059 of 1994

Between:

G.Srivaleela Prasad. .. **PETITIONER**

AND

The Andhra Pradesh Dairy Development
Co-operative Federation Limited and others.

.. RESPONDENTS

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ORDER:

This writ petition is filed questioning the action of the first respondent in rejecting the petitioner's request for being placed over and above, un-official respondents 2 to 5, in the seniority list and in issuing proceedings dated 01-04-1994, rejecting the petitioner's request in this regard, as arbitrary and illegal.

Facts, to the extent necessary for this writ petition, are that the petitioner, an L.C.E., was appointed as Work Inspector on NMR basis and joined duty on 22-06-1977. While he was officiating as an Assistant Engineer, (equivalent to a Section Officer), the second respondent herein was appointed as Draughtsman Gr.III in the year 1980. The 3rd and 4th respondents were appointed as Draughtsman Gr.III in the year 1980 and 1981 respectively. Though the 5th respondent was appointed as a Work Inspector prior to the petitioner, he passed L.C.E. in the year 1980. Petitioner would

contend that since he was posted as in-charge Section Officer, in an existing vacancy at Rajahmundry, on 11-04-1984 originally for a period of six months, which was extended thereafter and since the scale of pay of Section Officer at that time of Rs.700-1200 was far higher than that of the Draughtsman Gr.III in the scale of pay of Rs.500-800 and inasmuch as the petitioner was working under the control of the Assistant Engineer (Civil) whereas Draughtsman Gr.III had to work under a UDC/Head Clerk, the petitioner should have been treated as senior to respondents 2 to 5. It is stated that the petitioner was paid an additional remuneration of Rs.200/- per month on the ground that he was discharging the duties of a Section Officer, and that his services were regularized in the year 1986. Petitioner would contend that the services of unofficial respondents were also regularized in the year 1986 and all of them, (petitioner and respondents 2 to 6), were promoted as Section Officers pursuant to the recommendations of the Departmental Promotion Committee in its meeting held on 26-05-1986. Petitioner is said to have submitted a representation and on the representation not being considered, he along with one Sri B.Veereswara Rao had filed W.P.No.16144 of 1993, which was disposed of, by order, dated 06-11-1993, directing the respondents to dispose of the petitioner's representation. The petitioner filed W.P.No.19051 of 1993, when promotion was sought to be given to the unofficial respondents. The order of the first respondent, dated 01-01-1994, disposing of the petitioner's representation and rejecting his request to be placed higher in the seniority list of Section Officers, is the subject matter of challenge in the present writ petition.

Sri M.Pandu Ranga Rao, learned counsel for the petitioner, would submit that the services of the petitioner, erstwhile Work Inspector, was regularized in the year 1986 and he was appointed as Section Officer in the scale of pay of Rs.700-1200. Learned counsel would submit that while the petitioner, who was regularized was paid the scale of pay of Rs.700-1200, respondents 2 to 5, were continued in the

same scale of pay Rs.500-800. According to the learned counsel, in the absence of any specific quota being earmarked for appointment to the post of Assistant Engineers and since the feeder posts, for promotion to the post of Assistant Engineer, are the posts of Section Officers and Draughtsman Gr.III, the petitioner, on account of his higher scale of pay, would be entitled to be placed senior to respondents 2 to 5. Learned counsel would place reliance on **ANIL SRIVASTAVA v . U.O.I. & Ors.** in this regard. Learned counsel would further contend that the petitioner is entitled to have his temporary service included for the purpose of reckoning his seniority and, if his past services were so included, then he would automatically be senior to respondents 2 to 5 even if the initial date of appointment is taken as the basis for reckoning seniority.

Respondents would submit that the petitioner was appointed as a Work Inspector on N.M.R. basis on 22-06-1977 and that his services were utilized in different areas of work till he was promoted as Section Officer (Civil) on 27-05-1986. It is stated in the counter affidavit that the petitioner's services were regularized after the Service Regulations were amended in 1986, providing for promotion from the post of Works Inspector to the post of Section Officer (Civil). It is stated that respondents 2 and 3 were appointed as Draughtsman Gr.III in the year 1980 and respondent No.4 was appointed as Draughtsman Gr.III in the year 1981, and that the petitioner's incharge arrangement would confer no right on him to claim promotion to the higher post.

Sri N.Rajeshwara Rao, learned Standing Counsel, would place before this court a copy of the proceedings of the A.P. Dairy Development Cooperative Federation Limited, dated 27-05-1986, wherein, pursuant to the proceedings of the Departmental Promotion Committee held on 26-05-1986, certain Draftsman Gr.III in the scale of pay of Rs.500-800 and Works Inspectors working in Civil Engineering

Wing were promoted as Head Draftsman/Section Officer (Civil)/Civil Supervisors in the scale of pay of Rs.700-1200. The petitioner as well as respondents 2 to 5 were promoted as Section Officers (Civil), vide proceedings, dated 27-05-1986, and were all placed in the scale of pay of Rs.700-1200.

The contention of Sri M.Pandu Ranga Rao, learned counsel for the petitioner, that consequent upon his promotion as a Section Officer, the petitioner was placed on higher scale of pay of Rs.700-1200, whereas respondents 2 to 5 were continued in the scale of Rs.500-800, is without factual foundation, since the records reveal that the petitioner and respondents 2 and 5 were all promoted as Section Officers and placed in the scale of pay of Rs.700-1200. The contention, that persons drawing higher scales of pay must be placed above persons, drawing lesser scales of pay, in the seniority list, is therefore of no consequence. Reliance placed on **ANIL SRIVASTAVA's** case (supra) in this regard, wherein, the Supreme Court held that in the absence of any Rules, persons drawing higher scales of pay must be placed above those, who draw lesser pay scales, has no application to the facts of the present case.

Insofar as the contention that temporary service rendered earlier by the petitioner should also be taken into consideration for the purpose of reckoning seniority, it is necessary to note that it is only pursuant to the amendment of the Rules in 1986, did the rules provide for the post of Work Inspectors. It is well settled that only when the Rules provide for appointment to a post, that the services of an employee could have been regularized. Appointment of the petitioner as Work Inspector on NMR basis and his continuance as such was only on account of the fact that the Rules prior to 1986 did not provide for the post of Work Inspector. The petitioner is, therefore, not entitled to have his temporary service rendered prior to the date of his regularization in the year 1986, taken into consideration for the purpose of reckoning his seniority as work Inspector or Section Officer.

In this context, reference is made to the judgment of the Division Bench of this court in ***K.L.N.S.MURTHY v. GOVERNMENT OF A.P.***, wherein, following several judgments of the Apex Court, this court held that the service rendered by an *adhoc* appointee, appointed *dehors* the service rules, who subsequently gets appointed on regular basis without any interruption in service, cannot be treated as regular service, and that such *adhoc* service cannot be tagged on to the service rendered by the appointee, after regular appointment, for computing the period of regular service.

It is thus clear that the temporary service, more so, in the absence of the service rules providing for such a post, cannot be reckoned for the purpose of seniority and that an employee is entitled to have his service reckoned only from the date of regularization for the purpose of computation of his seniority.

The writ petition fails and is accordingly dismissed. No order as to costs.

23-02-2006

Prv